NEWLAND ENTERPRISE PTE. LTD. v. "SANTA ARONA" (OWNERS OF)

[O.C.J. (Edgar Joseph Jr. J.) 26 February 1988]

[Penang – Admiralty in Rem No. 5 of 1984]

Civil Procedure – Discontinuance of plaintiffs' action – Whether discontinuance effective – Non-service of application documents on solicitors – Whether fatal.

Civil Procedure – Court orders – Setting aside – Application for – Whether court orders valid and binding – Nature of court orders.

Civil Procedure – Solicitors for defendants – Whether solicitors had authority to appear for defendants.

The plaintiffs issued a writ of summons against the defendants claiming, *inter alia*, damages for the loss or conversion of their cargo on board the defendants' vessel. Thereafter, the plaintiffs through their solicitors discontinued the whole action and thereby served the notice of discontinuance. However, the defendants served a notice of motion claiming certain orders. Two sets of orders dated 28 August 1984 and 12 October 1984 were then made.

In the present case, the plaintiffs applied to set aside the two sets of orders on the grounds that following the plaintiffs' discontinuance of the suit, the orders were obtained thereafter without prior service of the necessary applications on the plaintiffs outside the jurisdiction and that the defendants' solicitors had no authority to act on behalf of the actual owners of the "Santa Arona".

Held, dismissing the application: (1) the mere fact that the solicitors for the plaintiffs in this case had discontinued the action did not relieve them from liability until the substitution on the record of another solicitor or of the plaintiffs in person, neither of which events had occurred;

(2) in the present case, the plaintiffs had effectively discontinued the action;

(3) the orders of 28 August 1984 were obviously intended to give effect to rights acquired by the defendants in the course of proceedings. The orders were valid and binding upon the plaintiffs. Similarly, the orders of 12 October 1984 were merely consequential to the orders made on 28 August 1984 and were also valid and binding upon the plaintiffs;

(4) the solicitors for the defendants had authority to defend the action.

Cases referred to:

(1) *Lady de la Pole* v. *Dick* (1885) 29 Ch.D. 351 (cited).
(2) *The Queen* v. *Justices of Oxfordshire* [1893] 2 Q.B. 149 (cited).
(3) *Newcomen* v. *Coulson* (1877-1878) 7 Ch. D. 764 (cited).
(4) *Porter* v. *Fraser* (1912) 29 T.L.R. 91 (cited).
(5) *Re Brocklebank, ex parte Brocklebank* (1877) 6 Ch. D. 358 (refd).
(6) *Reynolds* v. *Howell* (1873) L.R. 8 Q.B. 398 (refd).
(7) *Wright* v. *Castle* 36 E.R. 5 (cited).

ADMIRALTY IN REM.

J. A. Yeow for the applicant.

Darshan Singh Khaira for the respondent.

Cur. Adv. Vult.

Edgar Joseph Jr. J.: This was a plaintiff's application (en. 44) to set aside two sets of orders made by this court on 28 August 1984 and 12 October 1984 pursuant to applications by the defendants (encs. 24 and 30) issued on 22 August 1984 and 14 September 1984 respectively.

The orders of court made on 28 August 1984 were as follows:

(a) that damages as assessed by the Senior Assistant Registrar be paid by the plaintiffs to the defendants;

(b) that costs of these proceedings as taxed be paid by the plaintiffs.

The orders of court made on 12 October 1984 were as follows:

(a) that all sums deposited by the plaintiffs or on their behalf into court be utilized towards damages and costs assessed by the Senior Assistant Registrar as being payable by the plaintiffs to the defendants;

(b) that the costs of the application pursuant to which these orders were made be paid by the plaintiffs to the defendants.

In order to understand the issues which arise on the application (en. 44) now before the court, it is necessary to refer to the history of these proceedings leading up to them.

I must start with the writ of summons issued on 10 August 1984 and, in particular, to the indorsement of claim thereon, by which the plaintiffs, as owners of certain cargo laden on board the defendants' ship "Santa Arona", of the Port of Honduras and/or as holders and/or indorsees of the bill of lading No. 16 Mad 84 dated 5 July 1984, whereunder the said cargo was shipped, claim damages, costs and interest from the defendants for loss and/or damages sustained by reason of the

defendants' non-delivery and/or conversion of the said cargo in respect of the agreement relating to the carriage of goods as evidenced by the bill of lading aforesaid.

On 15 August 1984, the plaintiffs requested and were granted a caveat against the issue of a release with respect to the ship "Santa Arona" which was by then under arrest and, in the event of it being sold by order of court, a caveat against payment out of court of the proceeds of sale.

On the same day, the usual order was made by this court for preservation of the "Santa Arona".

Upon being served with the writ, the defendants then successfully applied *ex parte* on 17 August 1984 for leave to enter conditional appearance on the ground that they would be contesting the issue of the writ of summons and the warrant of arrest issued against the said vessel upon the application of the plaintiffs. They duly entered conditional appearance on 17 August 1984.

On 21 August 1984, the plaintiffs' solicitors, Messrs. Shearn Delamore & Co., filed a notice of discontinuance wholly discontinuing the action against the defendants. On the same day, the plaintiffs requested, and were granted on the next day, the issue of a release with respect to the "Santa Arona" and her cargo laden therein.

On the next day, the defendants' solicitors caused to be issued the notice of motion (en. 24) praying for the following orders:

(a) that the writ of summons herein be struck out or be set aside or be stayed;

(b) that the warrant of arrest be struck out and be set aside;

(c) that the caveats filed herein be set aside or be struck out;

(d) that all orders made herein for discharge or removal of the cargo on board the motor vessel "Santa Arona" be set aside or be stayed pending the hearing of this application;

(e) that damages as assessed by the Senior Assistant Registrar be paid by the plaintiffs to the defendants;

(f) that costs of these proceedings as taxed be paid by the plaintiffs to the defendants;

(g) all consequential and further and other orders.

Also, on 22 August 1984 Messrs. Darshan Singh & Co., as solicitors for the defendants, served upon Messrs. Shearn Delamore & Co., as solicitors for the plaintiffs, a copy of the conditional appearance and a copy of the notice of motion. But, on the next day, that is to say, on 23 August 1984, Messrs. Shearn Delamore & Co. returned both these documents accompanied by a letter addressed to Messrs. Darshan Singh & Co. stating:

"We have filed a notice of discontinuance in respect of the above matter, a copy of which is enclosed for your retention. We therefore return herewith your enclosures.

Kindly do the necessary.

Yours faithfully,

sgd. Shearn Delamore & Co."

Then, on 28 August 1984 Mr. Darshan Singh, as counsel for the defendants, appeared in court on the hearing of the notice of motion (en. 24) but no one appeared on behalf of the plaintiffs and he produced the following letters:

(1) a copy of a letter dated 24 August 1984 from Messrs. Darshan Singh & Co. as solicitors for the defendant, addressed to Messrs. Shearn Delamore & Co. which reads:

"Dear Sirs,

Re: *Pg. High Ct. Admiralty Suit No. 5/84 Newland Enterprise Pte. Ltd.* v. *The Owners of the Ship "Santa Arona"*

Further to our letter dated 22 August 1984 we enclose herewith the signed and sealed copy of the motion by way of service on you.

Please take note that the above application is fixed for hearing on 28 August 1984.

Kindly acknowledge receipt.

Thank you.

Yours faithfully,
Darshan Singh & Co.

Encl:"

(2) a reply from Messrs. Shearn Delamore & Co. dated 25 August 1984, addressed to Messrs. Darshan Singh & Co., which reads:

"Dear Sirs,

Re: Penang High Court Admiralty Suit No. 5/84
Newland Enterprise Pte. Ltd. v. *The Owners of the Ship "Santa Aroma"*

We refer to your letter dated 24 August 1984

Kindly be advised that we have filed a notice of discontinuance in respect of the above matter and as we are no longer in conduct of the matter, we would therefore not be attending the hearing of the notice of motion.

Yours faithfully,

sgd. Shearn Delamore & Co.

c.c. Senior Assistant Registrar
High Court, Penang"

In the circumstances, counsel Mr. Darshan Singh having only asked for orders as prayed for in prayers (e) and (f) of the notice of motion (en. 24), namely, that damages as assessed by the Senior Assistant Registrar be paid by the plaintiffs to the defendants and that the costs of the proceedings as taxed be paid by the plaintiffs, these were granted accordingly.

Thereafter, on 14 September 1984, there was issued in the name of the defendants a summons-in-chambers (en. 30) praying for the following orders:

(a) an order that all sums deposited by the plaintiffs or on its behalf into court be utilized towards damages and costs ordered to be assessed by the Senior Assistant Registrar and be paid by the plaintiffs to the defendants;

(b) such further or other relief as is expedient and just;

(c) costs of this application be paid by the plaintiffs.

On 12 October 1984, both Mr. Darshan Singh as counsel for the defendants and Mr. J.A. Yeoh of Messrs. Shearn Delamore & Co. who had filed a notice of discontinuance appeared before Mr. Justice Mustapha. Mr. Yeoh intimated that his firm was no longer on record for the plaintiffs and an order was made in terms of the summons (en. 30) hereinbefore reproduced.

It was against the background of the above facts that the plaintiffs through their solicitors applied by summons-in-chambers (en. 44) to set aside the orders of 28 August 1984 and 12 October 1984 on two separate grounds, namely:

(a) that following the plaintiffs' discontinuance of the suit, the orders concerned were obtained thereafter without prior service of the necessary applications on the plaintiffs outside the jurisdiction;

(b) that Messrs. Darshan Singh & Co. had no authority to act on behalf of the actual owners of the "Santa Arona".

As to ground (a), the affidavit of Mr. Yeoh, affirmed to on 10 December 1985 (en. 45) states, *inter alia,* as follows:

"3. I crave leave to refer to the notice of discontinuance filed on behalf of the plaintiffs on 21 August 1984 and am instructed to bring to the attention of this honourable court that the said notice of discontinuance was filed without notice of the defendants' conditional appearance which was served by way of a letter by their solicitors Messrs. Darshan Singh & Co. dated 22 August 1984.

4. I crave leave to refer to a letter dated 14 September 1984 from Darshan Singh addressed to the Senior Assistant Registrar, High Court, Penang wherein the Senior Assistant Registrar was advised that Messrs. Shearn Delamore & Co. were no longer acting for the plaintiffs in this matter.

4.2 However, notwithstanding the said letter Messrs. Darshan Singh & Co. continued to serve copies of further cause papers on us in spite of our objection ..."

As to ground (b), the affidavit of Mr. Yeoh had attached to it, as ex. JA 11, a copy of an unauthenticated and unsigned affidavit of one Ewe Choong Lay, filed in respect of Admiralty in Rem No. 9/84 at the High Court, Penang, which purported to set out the position of Messrs. Darshan Singh & Co. *vis-a-vis* the actual owners of the vessel "Santa Arona" and their solicitors Messrs. Chang & Vello.

However, before I reproduce the contents of that purported affidavit, I must now make a passing reference to Admiralty in Rem No. 9/84. That was a suit issued on 29 October 1984 wherein the plaintiffs, who were twenty in number, and represented by Messrs. Darshan Singh & Co., claimed arrears of wages, salaries and other benefits earned by them as seamen on board the "Santa Arona" from the defendants who were the owners and all other persons interested in the "Santa Arona" represented by Messrs. Chang & Vello. The statement of claim added that the vessel had arrived in the port of Penang on 29 July 1984, was arrested

on 10 August 1984 and released on 22 August 1984 but had been unable to sail due to lack of supplies, payment of wages and other emoluments.

Messrs. Chang & Vello, advocates & solicitors, represented the defendants and the suit ended on 30 April 1985, with judgment being entered for the plaintiffs for the aggregate sum of $224,135.85.

I must now reproduce the affidavit of Ewe Choong Lay of 69, Perak Road, Penang (the essential parts of which are italicized). It reads as follows:

"1. I am the executive director of Syarikat Perkapalan Sangsuria Malaysia Bhd. a company incorporated in Malaysia and having its place of business at No. 66, Bishop Street, Penang.

2. On or about 29 July 1984 my company was appointed by one Mr. Francis Teo of Messrs. Ocean & Coastal Marine Services (Pte) Limited of Singapore as the agent for the vessel "Santa Arona" on her call to Penang. I had the conduct of this agency.

3. Mr. Francis Teo requested me to give him a report of the vessel's condition as she was having engine trouble.

4. I contacted the vessel's chief engineer and ascertained from him that the vessel's engine cyclinder had broken down. I relayed this fact to Mr. Francis Teo by phone and further informed him that it was best that he came to Penang to look into the matter.

5. Mr. Francis Teo arrived in Penang on or about 31 July 1984 and I accompanied him to the vessel where he had discussions with the master and chief engineer. I was not present at this meeting. Later Mr. Francis Teo, accompanied by me and the master and chief engineer, came ashore and proceeded to the Ambassador Hotel for further discussions. I was not invited to take part in the discussions.

6. Mr. Francis Teo thereafter requested me to assist the chief engineer to arrange for local repairers to attend to the vessel's repairs. I carried out his instructions. Mr. Francis Teo left for Singapore the next day.

7. On or about 10 August 1984, Mr. Francis Teo returned to Penang and both of us visited the vessel and returned ashore to his hotel. He told me that the master and chief engineer would be calling at the hotel to see him that evening.

8. At about 6 p.m. or thereabouts on 10 August 1984 I received news that the vessel was under arrest by this honourable court. I proceeded to the Ambassador Hotel and informed Mr. Francis Teo of the arrest. The master and chief engineer were already at the hotel. Mr. Francis Teo then asked me to leave them as they were having a meeting.

9. At or about 7.30 p.m. on the same day, I returned to the hotel to see Mr. Francis Teo who asked me whether I could find buyers and dispose the cargo on board the "Santa Arona" and also its bunkers. I told him that it was not possible to sell the cargo but I could only arrange for transhipment after release of the vessel from arrest. A few days later about 16 tons of bunker oil were pumped out of the vessel and disposed. This was done with the full knowledge of the captain and the chief engineer. There were about 75 tons of bunker oil on board the vessel. Further disposal of the bunker oil was interrupted when the marine police intervened.

10. Mr. Francis Teo engaged Messrs. Darshan Singh & Co. to enter appearance in the admiralty proceedings leading to the arrest of the vessel. On or about 22 August 1984 the vessel was released from arrest.

11. One Mr. Ip Tsan Man from Hong Kong and who was in Penang in connection with another vessel ('Yih Shen') for which I was the charterers's agent, told me that he had bought the vessel "Santa Arona" from Mr. Francis Teo and that he was prepared to assist me to finance the "Santa Arona's" crews' wages, bunkers and provisions to enable the vessel to sail to Madras. He said that he would charge me interest for whatever funds that he would give. Pursuant to this arrangement Mr. Ip Tsan Man handed me M$25,000.

12. I ascertained from the vessel's master that he and the crew had not received their August and September 1984 wages. They agreed to accept half month's wages for August 1984 and the second half to be paid when the vessel arrived at Madras. On this undertaking, I gave the master and crew M$11,400 towards the August half month's wages. There is now produced and shown to me a copy of cash voucher dated 11 September 1984 for M$11,400 signed by the master marked as exhibit 'ECL-1'.

13. On the following day after payment, *i.e.* 12 September 1984, the master informed me that the crew refused to sail unless they were paid the other half month's wages for August 1984. Thereafter I stopped all supplies of provisions to the vessel.

14. In addition to the payment of M$11,400 to the master, I also paid cash advances to the master, *viz.* M$600 on 14 August 1984 and 6 September 1984. There are now produced and shown to me a copy each of cash vouchers dated 14 August 1984 and 6 September 1984 marked as exhibits 'ECL-2' and 'ECL-3'.

15. On or about 17 October 1984, I came to know that the vessel's true owners were (1) Professional Line Company Ltd., and (2) Ocean & Coastal Marine Services Company Limited, both of Bangkok. Their representative Mr. Rungruang Sae-Kow (known as Mr. Kow) arrived in Penang and has engaged the services of Messrs. Chang & Vello, to protect their interest in the vessel. Mr. Kow also came to see me and showed me shipping documents evidencing true ownership of the vessel.

16. I was unable to contact Mr. Francis Teo and I received no further instructions from him since September 1984. I made attempts to contact him by telex and telephone. There was no response.

17. Sometime in late October 1984 Mr. Darshan Singh approached me and requested me to sign two letters (undated). I now produce copies of these letters as exhibits marked 'ECL-4' and 'ECL-5'. The letters purported to

confirm that Messrs. Professional Line Co. Ltd. were the owners of the vessel. I refused to sign the letters as I was not officially appointed by Mr. Kow to be the vessel's agent.

18. On or about 9 January 1985 my company was appointed by Mr. Kow to act as the owner's agents for the vessel and which appointment my company accepted.

19. On 18 October 1984 the master of the vessel met Mr. Kow in Penang and wage matters were discussed. The master accepted a sum of M$1,000 for food expenses and in consideration towards negotiations for wages. There is now produced and shown to me a copy of cash voucher dated 18 October 1984 acknowledged by the master, marked as exhibit 'ECL-6'. The master demanded three months' wages but without prejudice Mr. Kow offered two months' wages which the master subsequently rejected."

(italics added)

The affidavit of Mr. Yeoh also attached to it, ex. AJ 12, a letter from Messrs. Chang & Vello dated 26 December 1984 addressed to Messrs. Shearn Delamore & Co. which was as follows:

"Dear Sirs,

Re: Penang High Court Admiralty Suit No. 5/84
Newland Enterprise Pte. Ltd. v. *The Owners of the Ship "Santa Arona"*

We refer to your letter of 14 December 1984. We are solicitors for the owners of the vessel m.v. 'Alda', now described as 'Santa Arona'. The vessel was wrongfully possessed by a Singaporean and brought to Penang and for whom Mr. Darshan Singh was acting. He has no *locus standi* to act for the 'owners'.

Our clients have not suffered any loss arising out of your arrest of the vessel in Penang.

Yours faithfully,

sgd.

c.c. The Senior Assistant Registrar,
High Court,
Penang"

I shall now consider ground (a) which raises the issue of non-service.

It is right to say at the risk of being trite, that so long as the solicitor to a party in an action remains on the record, service on that solicitor is good service (*Lady de la Pole* v. *Dick*[1]). A solicitor, therefore, can only be discharged from liability to receive service of proceedings by the substitution on the record of another solicitor, or of the party in person. In the event of such substitution, the discharged solicitor cannot be served, nor can he accept service: see *The Queen* v. *Justices of Oxfordshire.*[2]

I would hold, therefore, that the mere fact that the solicitors for the plaintiffs in this case had discontinued the action did not relieve them from liability to receive service of proceedings for they remained on record until the substitution on the record of another solicitor or of the plaintiffs in person, neither of which events had occurred.

I would further hold that the plaintiffs had effectively discontinued the action wholly although no leave was obtained for there was sufficient compliance with the requirements of Order 21 rule 2(1) and rule 2(3). The combined effect of those rules is that a plaintiff may discontinue an action begun by writ without leave against any or all the defendants at any time not later than 14 days after the service of the defence or of the last defence as the case may. The notice of discontinuance which has to be in Form 36 must be served on the defendant concerned not later than 14 days after service of the defence. Accordingly, in the present case, the plaintiffs had effectively discontinued the action on 23 August 1984 that being the date on which they had served the notice of discontinuance upon the solicitors of the defendants.

The next point to consider is the validity of the orders of 28 August 1984 and 12 October 1984. There is clear authority for the proposition that even after discontinuance by the plaintiff, the court can make such further order as may be requisite for giving effect to rights acquired by the defendant in the course of proceedings. So, for example, where a plaintiff has given an undertaking as to damages on obtaining an interlocutory injunction, an enquiry as to damages will be ordered even after discontinuance: *Newcomen* v. *Coulson.*[3]

In the present case, the order of 28 August 1984 provided for damages as assessed by the Senior Assistant Registrar to be paid by the plaintiffs to the defendants and that costs as taxed be paid by the plaintiffs to the defendants.

The order for damages to be assessed by the Senior Assistant Registrar was doubtless based upon the undertaking given by Messrs. Shearn Delamore & Co., the solicitors for the plaintiffs, to provide the bailiff with sufficient funds to meet the expenses of the arrest of the "Santa Arona" (en. 7 ex. "A") which had been duly effected on 10 August 1984. As I have already noted, on 21 August 1984 Messrs. Shearn Delamore & Co. requested, and on the next day were granted, the

issue of a release with respect to the "Santa Arona" and her cargo laden therein.

In these circumstances, I would hold that the order of 28 August 1984 was obviously intended to give effect to rights acquired by the defendants in the course of the proceedings. The rule in *Newcomen* v. *Coulson*[3] therefore applies and so I have no hesitation in holding that the order of 28 August 1984 was valid and binding upon the plaintiffs as Messrs. Shearn Delamore & Co. were still on record as their solicitors at the material time.

Similarly, the order of 12 October 1984 was merely consequential to the order made on 28 August 1984 and is also valid and binding upon the plaintiffs for the same reasons.

I shall next consider ground (b) which raises the issue of Messrs. Darshan Singh & Co.'s authority to represent the defendants.

Where an appearance is entered for a defendant without his authority, he can move by motion or summons to set aside the appearance with costs to be paid by the solicitor on a solicitor and own client basis: see *Porter* v. *Fraser.*[4] In the present case, neither the plaintiffs nor the defendants took out such an application.

Instead, the plaintiffs' solicitors did on 23 August 1984 serve the notice of discontinuance on Messrs. Darshan Singh & Co. as solicitors for the defendants, and counsel for the plaintiffs was actually present in court when the order of 12 October 1984 was made, though apparently he advised the court that his firm was no longer on record. The note of Mustapha J., before whom the matter came up, reads:

"Mr. Darshan Singh for app/dets. Mr. Yeoh for resp/plaintiffs (in spite of fact that Mr. Yeoh's firm has filed notice of discontinuance).

Court: O.I.T.

sgd. Mustapha J."

It was not until 20 December 1985 that the point as to Messrs. Darshan Singh & Co.'s want of authority was first taken in an affidavit affirmed to by Mr. Yeoh (en. 45). So, the point was being taken rather late in the day.

Assuming, therefore, that the plaintiffs have not by conduct waived their right (if any) to take the point (see, for example, *Re Brocklebank, ex parte Brocklebank*[5] and *Reynolds* v. *Howell*[6]), I am faced here with what appears to be a conflict of affidavit evidence; namely, on the one hand, an affidavit affirmed to by Mr. Darshan Singh, asserting that his firm had authority to represent the defendants in these proceedings and, on the other, the unauthenticated and unsigned copy of what purports to be the affidavit of Ewe Choong Lay suggesting otherwise.

I would, in passing, observe that the shipping documents, said to provide true evidence of ownership and referred to in paragraph 15 of the copy of the purported affidavit, were not produced to this court.

It is sufficient to say that in my view, the copy of the purported affidavit, assuming it to be admissible, is riddled with hearsay, especially so with regard to the issue of the ownership of the ship concerned.

It is impossible, therefore, for me to regard it as proving that Messrs. Darshan Singh & Co. had no authority to represent the defendants.

I would therefore hold that the copy of the purported affidavit is virtually worthless as evidence.

There is also, of course, a photostatic copy of a letter from Messrs. Chang & Vello, dated 26 December 1984, stating categorically that Messrs. Darshan Singh & Co. have no *locus standi* to represent the owners of the "Santa Arona" because, apparently, they (Messrs. Darshan Singh & Co.) were acting upon the instructions of a Singaporean who had wrongly possessed the vessel and brought it to Penang. Apart from the fact that this letter suffers from the defect that it is an unsworn statement, it also contains much that is hearsay on the crucial question of Messrs. Darshan Singh & Co.'s authority to represent the defendants. It is, therefore, also virtually worthless as evidence.

Now, I recognize that it is well-settled law, as Lord Eldon put it in *Wright* v. *Castle,*[7] that "if a solicitor files a bill in the name of his client, without having authority from him for so doing, then, if the plaintiff wishes to have the bill dismissed it will be so ordered ..." It is also settled that if the plaintiff denies and the solicitor asserts authority to have been given, and there is nothing but assertion against assertion, the court will say that the solicitor ought to have secured himself

by having an authority in writing, and that, not having done so, he must abide the consequences of his neglect. There must be a special authority to institute, although a general authority is sufficient to enable a solicitor to defend a suit.

As his Lordship concluded:

"In this case, the plaintiff has positively sworn that he gave no authority whatever to file the bill, and this is met by only a general assertion of his being authorized, on the part of the solicitor. The motion must therefore be granted."

In the present case, however, I am concerned with a dispute as to authority, not as between a client and his own solicitor, but as between a plaintiff and a solicitor who purports to represent a defendant. In other words, this is not a case where the defendants are asserting that Messrs. Darshan Singh & Co. had no authority to enter the conditional appearance on their behalf. It is, as I have said, the plaintiffs who are making that assertion and, when the material in support of that assertion is examined with care, it is obvious that there is no evidentiary basis for it.

I must now touch on a point made by counsel for the plaintiffs with regard to Admiralty in Rem No. 9/84. My attention was drawn to the fact that in those proceedings, Messrs. Darshan Singh & Co. were the solicitors on record for the plaintiffs who were, as I have said, the crew of the "Santa Arona" suing for wages whilst Messrs. Chang & Vello were the solicitors on record for the defendants who were the owners of the vessel. It was said that it was odd that Messrs. Darshan Singh & Co. should be acting *against* the owners in those proceedings and yet were acting *for* the owners in the present proceedings. Then it was said that in Admiralty in Rem No. 9/84, no objection was taken by Messrs. Darshan Singh & Co. to the *locus standi* of Messrs. Chang & Vello to represent the defendants.

I regret I find these submissions of no relevance to the issues which arise for decision upon the present application.

It must be recognized that Admiralty in Rem Nos. 5/84 and 9/84 are two entirely different suits which disclose different causes of action (one for wages and the other for loss of cargo) involving different plaintiffs though the defendants are the same.

I see nothing inconsistent in Messrs. Darshan Singh & Co. acting for the defendants in Admiralty in Rem No. 5/84 whilst acting against them in Admiralty in Rem No. 9/84. It certainly does not prove that Messrs. Darshan Singh & Co. had no authority to act for the defendants in Admiralty in Rem No. 5/84.

Similarly, I see nothing inconsistent in Messrs. Chang & Vello acting for the defendant owners in Admiralty in Rem No. 9/84 and Messrs. Darshan Singh & Co. acting for the defendant owners in Admiralty in Rem No. 5/84. The failure of Messrs. Darshan Singh & Co. to take objection to Messrs. Chang & Vello acting for the defendant owners in Admiralty in Rem No. 9/84 does not, in my view, prove that Messrs. Darshan Singh & Co. had no authority to act for the defendant owners in Admiralty in Rem No. 5/84.

I must, therefore, accept the assertion, on oath, of Mr. Darshan Singh that he had authority to defend the action. Accordingly, ground (b) of the plaintiffs' objection also fails.

In the result, the application is dismissed with costs.

Order accordingly.

Solicitors: *Shearn Delamore & Co.; Darshan Singh & Co.*

PUBLIC PROSECUTOR v. SAMSUL KAMAR BIN MOHD. ZAIN

[O.Cr.J. (K.C. Vohrah J.) 5 February 1988]

[Kuala Lumpur — Federal Territory Criminal Trial No. 22 of 1984]

Criminal Law — Dangerous drugs — Trafficking — Merits of defence — Dangerous Drugs Act 1952, s. 39B(1)(a).

Criminal Procedure — Application to use part of cautioned statement for purposes of section 157 of the Evidence Act — Merits of application — Evidence Act 1950, s. 157 — Criminal Procedure Code (F.M.S. Cap. 6), s. 425 — Dangerous Drugs Act 1952, s. 37A.

The accused was sitting on a bench with another person in front of a building when he was arrested by the police. Two packages were found on the accused. The packages contained heroin weighing a total of 24.22 grammes. The accused was charged with trafficking in heroin. The defence of the accused was mainly an admission that he possessed only one of the packages and